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UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

ASSISTANT SECRETARY AND COMMISSIONER
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Washington, D.C. 20231

411

RJH

Paper Number 411

In re Application of:

Denis P. Snider

Serial No. 08/634,039

Filed: April 17, 1996

For: METHODS AND COMPOSITIONS
CONTAINING ANTIGENS HAVING A
TARGETING MOIETY SPECIFIC FOR
ANTIGEN PRESENTING CELLS FOR
INTRANASAL IMMUNIZATION

DECISION ON PETITION

This is a decision on the petition, filed October 14, 1997 and supplemented on February 12, 1998, to withdraw the holding of abandonment. Note, the petition is being treated under the provisions of 37 CFR 1.181.

On February 5, 1997, a non-final Office action was mailed to applicants. On August 15, 1997, a Notice of Abandonment was mailed to applicants which indicated that the application was abandoned for failing to respond to the February 5, 1997 Office action. On October 14, 1997, the present petition was filed which asserted that the Office action dated February 5, 1997 was never received. The petition was supplemented with statements and evidence on February 12, 1998.

In accordance with MPEP section 711.03(c), such a petition must include:

- 1) A statement from the practitioner stating that the Office action was not received;
- 2) A statement from the practitioner attesting to the fact that a search of the file jacket indicates that the Office action was not received;
- 3) A statement from the practitioner attesting to the fact that a search of the docket records indicates that the Office action was not received; and
- 4) A copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed, wherein the copy is attached to and referenced in practitioner's statements.

MPEP 711.03(c) also states:

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather

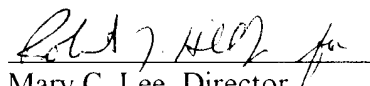
than a conclusion that the Office action was lost in the mail, e.g., if the practitioner has a history of not receiving Office actions.

Here, the petition fails to include 4) above. Therefore, the petition is not grantable at this time. Note, the copy of the mail log that was provided with the petition does not appear to be the same as the docket records noted in the MPEP. Furthermore, even if the petition did include 4) above, the petition would not have been sufficient here where there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail. Specifically, just recently the Office received at least 11 such petitions from practitioner which would constitute "a history of not receiving Office actions". Consequently, the petition is hereby dismissed.

Petitioner is hereby given two months within which to file a renewed petition with sufficient evidence to support the allegation of non-receipt of the Office action in question, e.g., the above statements, a copy of the docket records, an explanation giving the details of the procedure used in handling incoming mail from the USPTO and any changes in the procedure that may have occurred during the appropriate period, and any other evidence that would point to a conclusion that the Office action was lost in the mail rather than a conclusion that the Office action was lost after receipt.

At this point it is noted that the petition was accompanied by \$130.00 as a petition fee. However, such a petition does not require a \$130.00 petition fee. Therefore, a refund of the \$130.00 may be obtained by directing a copy of this decision along with a written request for such a refund to the Office of Finance.

PETITION DISMISSED.


Mary C. Lee, Director
Technology Center 1600

Sim & McBurney
Suite 701
330 University Avenue
Toronto, Ontario, Canada M5G 1R7